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# GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE

GOVERNMENT DOCUMENTS  
COLLECTION

## COMMENTARY

### SHOW CAUSE HEARINGS FOR APR 22 1999 209A VIOLATIONS

by Andrew P. Quigley

University of Massachusetts  
Depository Copy

The Appeals Court's recent decision in *Comm. v. Tripolone*, 44 Mass. App. Ct. 23 (1997) has brought to the forefront the inherent contradiction regarding the manner in which violations of domestic violence restraining orders are to be handled by the judicial system. The Appeals Court held in *Tripolone* that an individual, not under arrest, against whom an application for complaint for a violation of a protective order has been made pursuant to c. 218, s. 35A, is entitled to a hearing unless the facts presented to the magistrate bring the case within one of the statutory exceptions to the hearing requirement.

“Does anyone doubt that every complaint issued by a clerk-magistrate without a hearing will be challenged ... and ... that the victims will have to start at square one in the process to enforce the rights they supposedly have under c. 209A?”

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The pertinent language in s. 35A cited by the court is as follows: Upon receipt of “such complaint... the court... shall, unless there is an imminent threat of bodily injury, of the commission of a crime or of flight from the commonwealth by the person against whom such complaint is made, give to said person, if not under arrest for the offense for which complaint is made, notice in writing of such complaint; and said person shall be given an opportunity to be heard in opposition to the issuance of process.” For those who may not be familiar with s. 35A, this is the operative statute pursuant to which clerk magistrates of the district court conduct the so-called “show cause” hearings. A show cause hearing is an informal proceeding, usually not taped and held in a room which is usually not a courtroom, at which the complainant (whether police or civilian) must present facts which establish probable cause before a magistrate may issue process against a defendant.

As the Appeals Court noted, if the police report accompanying an application for complaint indicates that the violation of the restraining order by the defendant constitutes a threat of bodily harm (“I'm going to kill you”) or is of a nature which evidences a pattern of continual violation of the order, (repeated phone calls or commission of another crime, for example), the clerk may issue process without giving the defendant the right to a s. 35A hearing.

But in *Tripolone*, there was no evidence of either of these exceptions or of a risk of flight

(the defendant allegedly had made one, non-threatening phone call to his ex-girlfriend), and the complaint was issued without a hearing pursuant to the presiding judge's directive that no hearing be held. The Appeals Court upheld the trial court judge's dismissal of the complaint without prejudice on the basis that the defendant had been denied his right to a s. 35A hearing.

Two years ago, I wrote a column on these pages which explicitly dealt with this scenario (Forum, Vol. 2, No.2, June 1995). At that time, I noted that, "Any lawyer worth his or her salt will file a motion to dismiss the complaint before the judge on the basis that the defendant was not afforded his right to a hearing." (I should point out that the *Tripolone* case commenced its journey through the legal system in November of 1994.) I argued that although the instructors in a recent domestic violence training had urged clerk-magistrates to issue process in all cases of restraining order violations, such a *carte blanche* approach to addressing restraining order violations conflicted with a defendant's rights under c. 218, s. 35A - and the Appeals Court clearly has so ruled.

The problem, however, is that the procedure and purpose outlined in c. 218, s. 35A, which deals with misdemeanor crimes generally, is at odds with the procedure and purpose of c. 209A, s. 6 (7), which specifically addresses violations of restraining orders. Whereas the former statute gives a putative defendant the right to a hearing for the alleged commission of his misdemeanor offense (the restraining order violation in *Tripolone*), the latter requires police to "arrest any person a law officer witnesses or *has probable cause to believe* has violated a restraining order..." (emphasis added). I should point out, for those who may be unaware, that the power of arrest given to police in c. 209A for the misdemeanor crime of a restraining order violation is unusual. Ordinarily, police do not have the authority to arrest individuals for misdemeanors not committed in their presence. If the police are informed of the commission of an alleged misdemeanor by a civilian complainant, the police must come to court and fill out an application for complaint, for which the clerk then must give the defendant a show cause hearing pursuant to c.218, s. 35A, unless a statute (such as Chapter 209A) clearly provides otherwise.

**" The legislature in my view needs to address these issues by making the provisions of c. 218, s. 35A consistent with those in c. 209A, s. 6(7). "**

But for violations of restraining orders, c. 209A empowers the police to make an arrest without the need for going to court. Clearly, the intent of the law is to bypass the hearing requirement of c. 218, s. 35A. The legislature has determined that *any* degree of a violation of a restraining order is an arrestable offense for which the usual procedure for misdemeanors is not applicable. However, the police are not always able to make an arrest for any number of reasons, chief among which are that they cannot find the

defendant (who almost always has been ordered from the home pursuant to the restraining order). Thus, when the police are unable to make an immediate arrest, they come to court to obtain a warrant, based upon their determination that there is probable cause to believe that the defendant has violated the restraining order. In a situation where the defendant cannot be found, it makes perfectly good sense for the police to obtain a warrant. Upon the issuance of a warrant, the defendant's name goes into the warrant management system, and hence every police department in the state will be on the lookout for him.

But in view of the requirements of c. 218, s. 35A and the *Tripolone* decision, once the police come to court, a clerk now must determine not merely whether there is probable cause to believe that the defendant has violated the order, but whether the allegations bring it within one of the statutory exceptions such as to justify issuance of process without giving the defendant a right to a hearing. If not –in my opinion and from my experience, the vast majority of restraining order violations do not fall within the realm of explicit threats of bodily harm, but rather are of the nature of, "Let's get back together" or issues involving the children - then the clerk must set the matter down for a show cause hearing. (I should point out that the mere fact that the police cannot locate someone quickly does not establish a "risk of flight" sufficient to bring it within one of the exceptions in s. 35A)

Such a policy approach obviously conflicts with the intent of c. 209A. It rewards defendants who either by design or circumstances are elusive; it invariably will require that a victim attend the show cause hearing and have to deal with her antagonist when the purpose of the law is to keep him away from her; and it affords a clerk-magistrate a degree of authority which, in my view, conflicts with the intent of the law to have judges exclusively deal with these

(Continued on p.6)

# Law Enforcement Evidence Collection

## Quincy and Brookline Police Departments Use Digital Imaging Technology to Enhance Prosecution in Violence Against Women Cases

by Thomas Frane

Due to the confidentiality involved in domestic violence cases and other crimes involving violence against women, the dependency on commercial photo labs for processing evidence could create a serious breach of trust between the victims and law enforcement officials. Imagine being a female victim of abuse and allowing yourself to be photographed partially unclothed to expose bruises, bangs and cuts. Then having those photos viewed by people who may be your neighbors, the perpetrator, or worse, end up in the hands of the press, exposed to all. This has recently happened in the well-publicized murder of young JonBenet Ramsey in Boulder, Colorado. Autopsy and crime scene photos of this child were published in the national tabloids. The agency involved is a professional law enforcement department who depended on a commercial lab for processing of photos that ended up in hands of the press. This department was placed in a position of having compromised a sensitive investigation and looked upon by the public as mismanaging the case. This could happen to any agency who depends on a commercial lab to process evidence. Besides the public embarrassment a very special breach of trust given to the law enforcement agent by the victim will have been breached, a confidence most likely never to be regained.

The Quincy Police Department's policies in domestic violence cases when there are injuries or property damage, is to *take photos to tell the story*. The department presently uses a private lab to process domestic violence crime scene color photographs. Realizing the potential problems involved in relying on outside sources for evidence processing, a new system was obviously needed. The decision was made to use the new technology of digital photography and high speed computerization for processing of forensic evidence. This option has several immediate benefits to both the victim



and the law enforcement community. Digital images captured of the victim, the injuries, and the crime scenes are in the hands of the investigator only. The evidentiary images can be digitally worked, scanned, clipped, cropped, enhanced and printed immediately. This approach does not require any of the chemicals used in the processing of photos in the standard "wet lab." Instead the system is a "dry lab," and processing is faster and the department only pays for the images chosen to print.

Additionally, using these digital images, the Commonwealth may try cases where the victim will not or cannot testify for the Commonwealth. Often during the prosecution of cases involving victims of domestic violence and other crimes involving violence against women, photographs are needed. Photographs of (1) the victim's injuries, both at the time of the incident and later when they have worsened and (2) the

crime scene, the damage, blood and disarray are taken. All are extremely important. They will corroborate, or contradict, what the victim said to the officer on the scene versus what she may say on the day of the trial out of fear of retribution by the attacker, or even family members. Precise photographic images will ultimately ensure the safety of the victim. Typically a photograph will tell what happened to the victim and there will be no need for words to describe the fear, pain and suffering.

It is the goal of the Quincy Police Department to provide a sense of unquestioned trust within our community and unquestioned confidentiality with victims of crime. To accomplish these objectives a decision was made to improve our investigative abilities to collect photographic evidence and identify trace evidence. With a grant provided by the U.S. Department of Justice Violence Against Women Act (VAWA), through the Commonwealth of Massachusetts, Executive Office of Public Safety, and matching funds from the city of Quincy, we designed an electronic system to help combat violence against women. This system will consist of two 266

(Continued on p. 4)

### **Crime Lab (continued from p.3)**

MHZ PC's, built on tower platforms that have been specifically built and configured for this project. Included will be capture boards, CD-RW 6x (cd writable disks) Windows NT and two 21" high resolution 25mm monitors. For photo capture and enhancement we will be using Adobe PhotoShop for Windows NT. Photo-quality printing will be done on a Tektronic Phaser 560 Color Laser Printer. The camera systems will consist of Minolta RD 173 Digital Camera, a Sony DCR-VX1000 Digital Camcorder, four Polaroid Domestic Violence Camera Kits. In addition, we will use Linotype-Hell Jade Scanner and a Panasonic VHS 4680 SVGS Video Recorder. To enhance our ability to collect evidence we will use alternative light sources, using the Blue Light Ultra System for discovering latent trace evidence, both wet and dry which will give us the ability to identify and digitally photograph it. This system will allow us to store the photographic images of victims' injuries, evidence, written reports, scanned records and data concerning each individual case on writable CD's.

Under this grant we have provided off sites advanced training for six domestic violence officers. In addition the grant provides for a forty hour course of instruction for evidence officers in the operation of the new equipment. Besides the equipment and training provided by the grant, the Quincy Police Department has acquired a Polaroid MPX digital photo copier and dryer. As part of this system, the department will be using the Smith & Wesson Ideni-Kit 2000, which is a digital system operating on a Windows 95 operating system. This new system will be known as a "Dry Lab." It will be located in a newly constructed area in the Detectives Bureau of the department.

The Brookline Police Department is about to enter the digital photographic era as well, through the efforts of Capt. Jack Hiscock and Lt. Simmons. Brookline officers will shortly be using this technology to help in the investigation of domestic violence and violence against women cases. This was made possible with a VAWA grant, the same grant that funded the Quincy Police. The Brookline Police Department will be using the Kodak Digital Darkroom D420 system. This system consists of High Speed Computers using Kodak Digital Science Quick Solve Software, Kodak DC120 and Kodak Professional DCS Digital Cameras, Kodak Photo Doc Color Scanner and a Document 5500 Scanner. The program will use a CD writer system for the storing of images and a computerized juke box for instant retrieval of them. The printing system will consist of Kodak LED digital color printers. Brookline will also incorporate into this system a digital capture booking system for "mugs shots" and the digital capture of finger prints. The Brookline booking system will be on line twenty four hours a day with Boston Police and the MBTA Police sharing this information on a real time basis.

The Brookline Police along with the Quincy Police are putting technology in the forefront to help officers and prosecutors in the battle against domestic violence.

*Thomas Frane is the newly appointed Chief of Police for the Quincy, Massachusetts Police Department*

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### **A Word of Thanks from the Editor**

*It's hard to believe that the FORUM is now beginning its fifth year of publication. In February 1994 the lead article portrayed then Lt. Governor Cellucci awarding nationally known domestic violence advocate Stacey Kabat a proclamation declaring domestic violence a human rights violation. Domestic violence still continues to be a major human rights violation. However, Massachusetts has come a long way in battling this crime and can be proud of its efforts.*

*I'd like to take this opportunity to thank all those writers who have contributed to the success of this periodical. Many of you have very time-consuming professions and I know that you've spent anxious moments making our deadlines. Your contributions of timely and thought-provoking articles have made FORUM a success and I hope we will continue to hear from you. The FORUM mailing reaches over 1,000 criminal justice/advocate professionals in Massachusetts. So you can be sure that the word is spreading! Again thanks and as always please feel free to contact me at the Executive Office of Public Safety Programs Division (617) 727-6300 x305, if you wish to contribute an article.*

*Sincerely,  
Rai Cunningham*

# Note From the Executive Director of the Governor's Commission on Domestic Violence

by Jean Haertl



With the support and leadership of Governor Paul Cellucci, the dedicated members of The Governor's Commission on Domestic Violence have greeted 1998 with a number of comprehensive initiatives. The Governor has proclaimed 1998 "Domestic Violence Year" and the Commission will continue its efforts to identify state-wide needs, expand services to victims of domestic violence, and create a climate of zero tolerance to domestic violence.

Members of the Commission have worked diligently on House I budgetary Recommendations for domestic violence prevention. House I, filed by the Governor on January 27, 1998, includes 5.6 million new dollars for domestic violence initiatives. These expansion funds include over \$1 million for a child witness program, a transition housing program for victims of domestic violence, and advocacy and intervention for non-English speaking victims. With this expansion, we will also see increased services to victims seeking emergency shelter, economic, housing, and legal assistance. We are grateful for the strong ongoing bipartisan support of members of the legislature who work hard to help ensure funding for these critical programs.

The Commission is working collaboratively to address the needs of children who are victims and who witness domestic violence. The Transition Subcommittee of the Commission has convened a working group to examine current mandatory reporting practices and their impact on the safety of children, teen victims, and rape survivors. This group, chaired by Jaqui Bowman of Greater Boston Legal Services, will be making written recommendations to the Governor's Commission focusing on safe intervention practices for victims of domestic violence who are impacted by current reporting practices.

Through ongoing collaborations with non-profit agencies and corporate leaders, the Governor's Commission on Domestic Violence is creating innovative ways to expand awareness of domestic violence and extend services to victims. Toward this goal, members of local radio, television and print media are partnering with the Commission to develop innovative public service announcements. The Campaign to extend awareness throughout the Commonwealth has already extended into the workplace. As a result of the Governor's Executive Order establishing a domestic violence workplace policy, state administrators are collaborating with members of the Commission to provide an extensive "train the trainers" education program on domestic violence. This program will enable agencies to designate an in-house domestic violence trainer to inform employees of the state policy. In addition, a working group, co-chaired by Barbara Marlowe, of Mintz Levin, and James Hartnett, the Commonwealth's Personnel Administrator, have united corporate leaders with service providers to develop multi-disciplinary strategies to better address workplace violence throughout the state.

I would like to thank all the members of the Commission for the warm welcome. May your commitment, hard work and tenacity continue to inspire all of us in our efforts to end domestic violence.

Thank you.

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*Jean Haertl is the Executive Director of the Massachusetts Governor's Commission on Domestic Violence.*

## Commentary (continued from p.2)

matter. The issue raised by the first two points are obvious to anyone reading this, but to those unfamiliar with the show cause procedure, the third may not be. At a show cause hearing, a clerk-magistrate hears evidence to determine whether there is probable cause to believe that a crime was committed by the putative defendant. It sounds straightforward, but in practice, clerk-magistrates exercise wide discretion in issuing complaints. As the Appeals Court noted in *Tripolone*, citing with approval *Gordon v. Fay*, 382 Mass. 64, 69-70 (1980), "The implicit purpose of the s. 35A hearings is to enable the court clerk to screen a variety of minor criminal or potentially criminal matters out of the criminal justice system through a combination of counseling, discussion, or threat of prosecution." But does anyone seriously suggest that such a policy standard - which in the SJC's own words, deals with "minor criminal matters" - was meant to be applicable to the realm of domestic violence and violations of restraining orders, which the courts and the legislature have acknowledged as anything but "minor"? Further, since the crime with which the defendant is being charged involves the violation of a court order which has been issued by *a judge*, does it make sense that *clerk-magistrates* (who in the hierarchy of judicial officers are lower than a judge) should have the same unfettered discretion to issue a complaint as they normally do in the usual "minor criminal" matters which come before them?

Moreover, unquestionably one of the reasons why the legislature gave police the power of arrest for restraining order violations is to bring an immediate halt to the defendant's "contact" with the victim to prevent the possibility of a further escalation of conflict between the parties. The defendant's "contact" with the victim initially may be an ostensibly harmless "love note," but as we all know, such contact quickly can turn into dangerous behavior. But if the police come to court for the "love note" violation, a clerk-magistrate would generally be required to set the matter down for a show cause hearing unless the prior pattern of contact established that one of the exceptions applied. Because of the notice requirements of s. 35A, show cause hearings usually are scheduled for a week or more after the application is received by the court, thereby affording a defendant further opportunity to violate the restraining order.

There is also a flip side to this: Let's suppose that there is evidence presented orally by the police to a clerk-magistrate that persuades the clerk-magistrate that there may be a risk of harm to the victim. The clerk issues the complaint without a hearing. The defendant eventually is arrested and arraigned. But either at the arraignment or at some point down the line, his attorney raises the issue of the denial of his client's s. 35A rights, arguing that there is not sufficient evidence of one of the s. 35A exceptions such that a show cause hearing should not have been held. The judge now is in the position of second-guessing the clerk - not on the issue of whether there was probable cause to issue a complaint for a restraining order violation (which is what the proceeding is *really* all about), but on the subsidiary (and, arguably, irrelevant) issue of whether the violation was of a nature which brought it within one of the s. 35A exceptions. In the aftermath of *Tripolone*, does anyone doubt that every complaint issued by a clerk-magistrate without a hearing will be challenged by a defendant - and that a large number of complaints will be dismissed by judges with the result that the victims will have to start at square one in the process to enforce the rights they supposedly have under c. 209A?

The bottom line is that restraining order violations are not typical of other crimes which clerk-magistrates customarily deal with in the context of c. 218, s. 35A. The typical misdemeanor crime involves unrelated parties who have not had, nor probably ever will have, anything to do with each other. The stated policy purposes of s. 35A hearings to screen out minor crimes and attempt to have the parties reach an amicable settlement makes sense in circumstances such as these. But they simply do not apply in the context of restraining order violations.

The legislature, in my view, needs to address these issues by making the provisions of c. 218, s. 35A consistent with those in c. 209A, s. 6(7). If the police can make arrests for restraining order violations if they have probable cause, then clerk-magistrates should be able to issue complaints if they find probable cause, without regard to questions of threats of harm, risk of flight, or further criminality. The legislature should resolve the dilemma by adding a sentence in s. 35A (or in c. 209A, s. 6(7)) to the effect that if the complainant presents evidence which establishes probable cause of a restraining order violation, the clerk-magistrate may issue process, including issuance of a warrant for the defendant's arrest, without the need for a hearing.

This would not rule out the possibility of a clerk-magistrate exercising his or her discretion to schedule a hearing (or to deny the application). But it would resolve the differences between the statutes and bring a level of consistency to the manner in which the police and the courts deal with the serious problem of restraining order violations.

*[Editor's Note: In October 1997 the Office of the Attorney General filed legislation (H. Docket 5131) addressing this issue. Also, the opinions expressed in this article are not necessarily those of the Trial Court.]*

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Andrew P. Quigley is the First Assistant Magistrate of the Hingham District Court

# MASSACHUSETTS RAPE CRISIS CENTERS

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**FORUM** is a periodical of the Executive Office of Public Safety, Programs Division, published in collaboration with the Governor's Commission on Domestic Violence.

Its purpose is to provide a forum for discussion and serve as a clearinghouse for information on the issues addressing the declared public emergency of domestic violence. We welcome your comments and story contributions to **FORUM**.

*The views and opinions expressed in **FORUM** are those of the individual authors and do not necessarily reflect the views of the Commission.*

# **VICTIM RIGHTS CONFERENCE**

## **WEDNESDAY, APRIL 29, 1998**

This year's VICTIM RIGHTS CONFERENCE will take place on Wednesday, April 29, 1998, at the State House in Boston. Over 800 victims and victim advocates are expected to attend this day long event co-sponsored by victim rights organizations across Massachusetts.

This conference is organized each year by the Massachusetts Office for Victim Assistance (MOVA)/the Victim Witness Assistance Board and Attorney General Scott Harshbarger. This year's keynote speaker will be Azim Khamisa. Khamisa is the founder of the Tariq Khamisa Foundation in San Diego. The Foundation is named after Azim's son, who was shot to death at his work by a young gang member.

An awards ceremony and morning and afternoon workshops will also be featured. For more information call MOVA at (617) 727-5200 or your local victim rights/victim assistance organization.

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# GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE

## COMMENTARY

### An Epidemic in Our Homes: Domestic Violence. What's the Health Care Community Doing About It?

by Annie Lewis-O'Connor MSNMPH

Abuse of women and children, who are routinely tortured and maimed by abusers, is an age old phenomenon that continues today at a horrifying rate. Health care providers (HCP) often are the first responders to this abuse which includes stab wounds, burns, sexual assault, mental illness and often death.

As a health care provider, myself, for as long as I live, I know I will never forget a little four year old girl that I took to the morgue who died as a result of a beating sustained by her father. The bruised face of her mother, who stated over and over 'I didn't know what to do, I didn't know where to go for help,' still haunts me.

Health care providers enter into the profession for a variety of reasons -- one, being the desire to help those in pain and provide treatments that would alleviate those pains. The subject of domestic violence and child abuse, and the proper treatment of victims, however, often causes severe anxiety among those providers. Fortunately, the health care profession has recognized this and is beginning to provide a calm sequential clinical approach to caring for those they see in their respective practices who may in fact be subjected to abuse in the home.

The medical literature currently abounds with information related to incidence, prevalence, identification and intervention strategies. The F.B.I. reports that a woman is beaten every 15 seconds (U.S. Department of Justice, 1995) and the Childrens' Defense Fund reports that every 13 seconds a child is abused (1994). The Bureau of Justice Statistics reports that each year in this country approximately 1300 women and 1300 children are murdered by someone known to them. That's seven deaths per day! National health statistics indicate that a history of partner abuse is present in many women clients, 1 in 3 women seeking care for any reason in hospital emergency rooms (McLeer & Anwar, 1989); 1 in 7 women seen for general medical care in office practices (Freund & Blackhall, 1990; Elliot & Johnson, 1995); and 1 in 4 pregnant women (Helton, 1987; Norton et.al., 1995). In New York City and Cook County, Chicago, the majority of maternal deaths were related to trauma caused by intimate partner violence.

Not surprisingly, the morbidity and mortality associated with domestic violence has profound effects on the adult and child victims, the abuser, and society. For example, women suffer

“Today's health care providers (HCP) often are the first responders to this abuse, which includes stab wounds, burns, sexual assault, mental illness and often death.”

severe biopsychosocial problems that adversely affect their health and compromise their ability to participate in health promotion and health maintenance activities for themselves and their children. Firsthand, as a clinician for victims, I have witnessed this devastation that violence has on the whole family. Only a collaborative effort of all disciplines will ever begin to eradicate this 'issue'.

In the past our medical systems have failed to recognize the health threats caused to women as a result of violence: injuries, illnesses and psychosocial challenges (Martin, 1992; Flitcraft & Stark, 1991; Varvaro, 1989; Warshaw, 1989; Hamberger et al, 1992). The time has come, and the medical community has begun to accept a portion of the responsibility in identifying and assisting with intervention for victims of violence. Ideally, each discipline working *together* on cases will enhance the care and provide for the most optimal outcome.

Fortunately, many health care facilities have begun routine screening of women accessing health care. Routine inquiry about abuse as part of the health history, is recognized now as a standard of practice. While it has been routine practice to ask about safe sex, cigarette smoking and seat belts, health care professionals now acknowledge that screening for family violence is just as crucial, and just as important to the health and well being of an individual as screening for other conditions.

Asking such questions as:

**Does your partner ever hit, kick, punch or otherwise harm you? Does your partner ever make you feel afraid or scared? Does your partner ever force you to engage in sex when you do not wish to? If you could change two 'things' about your partner, what would they be? Does your boyfriend like to spend 24 hours a day - 7 days a week with you? Tell me the worst 'thing' your boyfriend has ever done to you?**

Such questions are beginning to become a routine part of taking the history of a victim. Such questions tell the patient that abuse and violence is a health care concern. While some HCP are concerned that asking such questions is too personal, I would argue that we already ask our patients very personal questions such as their sexual activity, drinking and bowel habits! My

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**“ The bruised face  
of her mother... still  
haunts me. ”**

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experience in routine inquiry has resulted in patients thanking me for asking, and thus in patients disclosing abuse.

Some patients in fact who denied abuse at the time of inquiry, have called me 2, 3, 4 months later to finally admit that they are in an abusive relationship.

Two notable concerns of health care providers when treating abuse victims are: 1) the time needed to inquire and 2) what to do if a patient discloses abuse. First, the 'time' issue. Health Care Providers are challenged with time, yet with creativity and augmentation of the current approach to taking a history, screening is possible. More frequent visits and follow up with patients allows the necessary time for screening. Secondly, and even more of an issue, is what to do when the patient discloses. Surely there is no simple answer, yet there are a number of interventions to consider such as the following:

1. **Validate** the victim: "I believe you and I'm so sorry that you've been treated this way, you don't deserve that."
2. **Empathize** with the victim: "I don't believe that this is your fault, I care about you and I'm worried for your safety (and the safety of your children)."
3. **Empower** the victim: "I'm really glad that you shared this with me. I know people who can help and I can provide you with information that you may find useful. You know what is best for yourself and whatever decision you make I will support you and be here for you."

I find that knowing my resources and referrals is critical. For example, when a patient states that religion is one of their obstacles to leaving, I help them locate clergy who are educated on this issue. Health Care Providers need to know who can help and should act as a catalyst and advocate in referring victims to other service providers.

So too, to establish a rapport with the victim is of course critical. Validating, empathizing and empowering the victim establishes a caring and therapeutic approach. Clinicians need to, and are capable of, assessing the lethality of the situation.

For example, using such tools as the **GET SAFER**

*(Continued on p.6)*

# New Victim Contact Initiative

## Quincy District Court Probation Program

by Honorable Mark S. Coven

The Quincy Probation Department, under the leadership of Presiding Justice Charles E. Black, has embarked on a new victim contact initiative as part of its ongoing efforts to combat domestic violence. This initiative requires a probation officer to make every possible effort to have face-to-face contact with the victim in a domestic violence case within thirty days of the offender being placed on probation. This contact is intended to establish a personal relationship between the probation officer and the victim.

Periodic follow-up contact with the victim is scheduled by a team comprised of probation officers and associate probation officers. Training for the probation staff on successful development of a working relationship of trust with the victim is being provided by the Office of the Commissioner of Probation.



The design of the Initiative is intended to serve three distinct purposes: 1) to monitor the probationer in order to determine compliance with conditions of probation; 2) to allow the victim confidence to know that she is able to report any violation of the conditions of probation to the probation officer charged with the responsibility of monitoring the offender, thus helping ensure that the victim will be available for any subsequent surrender hearings; and, 3) to direct the victim to appropriate resources for safety planning or other services if an emergency exists.

The Quincy Court presently supervises over 600 risk need probationers and an additional 600 probationers who have been convicted of operating under the influence of intoxicating liquor. The vast majority of the risk need probationers receive the maximum level of supervision. Of the non-OUI risk need case load, approximately 40% of the probationers are supervised for domestic violence. For those probationers in the community for domestic violence offenses, they are bound by strict terms of probation and strict supervision.

The victim contact initiative is one additional component in the ongoing efforts to combat domestic violence. The other components of the probation protocol for domestic violence offenders include enhanced supervision and immediate accountability:

### Supervision

Community supervision has been enhanced through the initiation of nighttime monitoring of probationers with a priority directed to domestic violence and sexual offenses. Through a cooperative effort with the Quincy, Randolph, and Weymouth Police Departments, probation staff make unannounced nighttime visits to probationer's homes to determine if conditions of probation and/or curfews are being maintained. It also provides an excellent opportunity to meet with the family members of the probationer to determine if any issues or problems need to be addressed. Night time visits are also used to initiate contact with victims as part of that initiative.

Enhanced supervision requires the active partnership of the probation staff and human service agencies where probationers are ordered to attend counseling. Ongoing communication is required with batterers' treatment programs, substance abuse providers and mental health professionals, especially when a probationer is not successfully attending or participating in a mandated treatment program.

Enhanced supervision also necessitates an active substance abuse screening protocol. *There can be no serious question of the correlation of domestic violence and abuse of drugs and alcohol.* The Quincy Court has 670 probationers now participating in court-ordered random drug testing. These drug tests are administered either monthly or up to weekly depending on the level of abuse and risk of recidivism.

When the court's new substance abuse screening protocol commenced in August, 1997, 19% of those screened tested positive for drugs or alcohol. In less than one year the protocol has reduced those positive tests to 10%, a fifty percent reduction in drugs and alcohol. The

*(Continued on p.4)*

success of the protocol is based upon: (1) truly random screening where the probationer is not informed of the test until that morning; (2) immediate accountability by issuing a surrender notice immediately upon a positive drug screen; and (3) graduated sanctions for continued drug and alcohol abuse by the imposition of increasing treatment options, such as supervised outpatient treatment, residential programs, halfway houses or incarceration if no other initiative has been successful.

#### Accountability

The monitoring and supervision of risk need probationers requires immediate intervention when a person is said to have violated any of the terms of probation. This is most clearly obvious when a new offense is committed, but is equally critical where the probationer has violated his or her conditions of probation, whether it be by termination from a court ordered program, for testing positive for drugs or alcohol, or for being the defendant in a civil 209A restraining order.

In 1997, The Quincy District court issued over 3500 violation notices to people placed on probation. Surrender hearings were scheduled immediately before a judge at the Quincy District Court and, in all of these cases, probationers were brought before the court to determine if there had been a violation of probation and for the imposition of appropriate sanctions, including incarceration for such violations.

The Quincy Court probation staff notifies the Norfolk County District Attorney's Office of all scheduled surrender hearings and, in any of the more serious cases presenting a high level of risk to the community, will receive assistance of the District Attorney's Office in prosecuting the probation surrender.

Virtually all surrender hearings are scheduled within 30 days of a notice of violation. A separate surrender session is held each Tuesday at the Quincy District Court and that session is designated solely to hear probation surrenders. Approximately 75 separate

hearings are scheduled for each such session.

This level of accountability is ensured through the presence of probationers at all hearings. The Quincy Court has initiated a new Warrant Apprehension Program with the Quincy, Randolph and Weymouth Police Departments. The apprehension team consists of probation officers and police serving violation of probation warrants with emphasis on those people on probation for domestic violence, sexual offenses, drug distribution, and multiple offender OUI cases. This cooperative effort between the police departments and probation staff is designed to insure that the more dangerous offenders who are on probation are immediately brought before the court after failing to appear at a surrender hearing.



#### Conclusion

The new victim contact initiative, together with the enhanced supervision and accountability of domestic violence probationers must be viewed in the context of a comprehensive plan for preventing further domestic

violence. It is hoped that the development of a personal and ongoing relationship with the victim will provide the probation officer with immediate information with regard to any violation or danger and will allow the probation officer to respond at the earliest possible time in order to prevent future acts of violence.

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*Honorable Mark S. Coven is an Associate Justice at the Somerville District Court, and is Managing Justice for Probation at the Quincy District Court. He also serves on the Appellate Division for the Northern District of the District Court Department.*

# Community Action Committee Inc. of Cape Cod & the Islands

by *Safe Harbor, Inc.*

Community Action Committee of Cape Cod & Islands, Inc. (CACCI) opened the doors to **SAFE HARBOR**, a homeless shelter for battered women and their children on December 1, 1995. Safe Harbor was created as a community effort to provide increased services and long term shelter for battered women and their children who have become homeless due to abuse.

CACCI is a non-profit anti-poverty, human service-social action agency that has been operating since 1965 to empower and improve the lives of low income residents of Cape Cod and the Islands. The Executive Director is Richard Bigos, and it was through his dedicated efforts and belief in the mission of CACCI that enabled Safe Harbor to become a reality.

Safe Harbor provides shelter for up to 20 families at one time. The facility is comprised of twenty individual units, a child care center, and a main building that is designed for programming, staff offices, and a family style dinning room. The program is geared towards providing educational programs on domestic violence housing issues, employment, self esteem, and parenting. Women are offered a safe place while they redevelop and work towards obtaining their goals. Each family works with their Family/Child Advocate in creating an individual service plan based on their specific needs. Although the needs of the guests may vary, Safe Harbor maintains certain commonalities for each guest, such as working toward their housing plan and participating in the program.

On the campus of Safe Harbor there is a children's center, designed to encourage healthy play and age appropriate activities. The children's center focuses on conflict resolution and fostering an environment that encourages non-violent play. Each child is given the freedom of interaction, with guidance to explore, grow and share in a safe place.

Seven full time employees, two part-time and sub-relief positions staff Safe Harbor. Terry Lavery is the Program Director, with Wendy Kapp as the Assistant Program Director. Safe Harbor also utilizes the other programs offered by CACCI, thus enabling many of the

guests the opportunity to locate and obtain housing with a HIP advocate and/or find child care placements through Child Care Network.



Since the shelter is not a confidential facility, security is of the utmost importance. The shelter's security system is unique. The system consists of surveillance equipment, remote alarms, a monitoring system, armed guards and comprehensively trained and drilled staff for immediate response time. The program has been developed with policies and procedures to ensure safety for both guests and staff. The security system has proven to be a successful deterrent for any batterer since Safe Harbor has not experienced any incidents to date.

*For further information on **SAFE HARBOR** services, call (508) 790-2933*

## CAPE AND ISLANDS REGIONAL DOMESTIC VIOLENCE COUNCIL

The Cape and Islands Regional Domestic Violence Council was recently established in March 1998. The Council is made up of 20 members from various criminal justice agencies, nonprofit service provider agencies and a representative of Congressman Bill Delahunt's office. The Council meets monthly to discuss issues concerning domestic violence, sexual assault and child abuse. Meetings are held in the offices of the CACC in Hyannis.

For further information, contact Council Coordinator Sandra Blanchford at (508) 771-1727

acronym assists the clinician in working towards a safety plan with the victim.

The GET SAFER tool is as follows:

**G - Guns.** Does your abuser have access to a gun?

Do you feel your abuser is capable of using the gun to harm you?

**E- Etoh (Alcohol).** Does your abuser use alcohol or drugs? Which ones? How often, how much? How do they act?

**T- Threaten.** Does your abuser threaten to kill or harm you? Do you think your abuser is capable? What is the worst 'thing' your abuser has done to you?

**S- Suicide.** Has your abuser ever threatened suicide, had a suicide attempt? Does your abuser feel hopeless, helpless or had many recent losses, (i.e. job, relative, illness etc.)?

**A- Activities.** Does your abuser control your activities and isolate you from family and friends?

**F- Fear.** Are you afraid to leave? Do you fear what your abuser will do? What happened the last time you left? What do you think will happen if you leave now?

**E- Emergency Room.** Have you been seen in the emergency room for injuries? How often? What injuries? What was the worst?

**R- Referral.** I would like to give you some referrals or people/agencies you can call for help/assistance. I'd like to see you again in a few weeks for follow up.

The **GET SAFER** tool (Lewis-O'Connor, 1997) helps the victim and the provider sense how dangerous the situation may be. Based on this assessment of lethality a safety plan can be developed with the patient. While some providers are comfortable with this process others use legal advocates, social workers or the like to provide this service to the patient. Many health care facilities now employ a domestic violence advocate on site to assist victims. These advocates are working closely with the providers and the legal system to provide a coordinated approach that will ideally enhance the outcomes.

In Massachusetts and throughout the U.S., initiatives are now in place to assist in educating health care professionals on abuse victims. Cross training is occurring in many health care settings and basic training has begun to educate nursing, medical and social service students while in school. Through sound research the medical literature has begun to document the effects of domestic violence on the individual and the family. More universities are offering courses on family violence and the public health community with preventative and innovative strategies.

Neighborhood Health Plan, a not-for-profit HMO serving Massachusetts' communities since 1986, has produced a comprehensive Family Violence Resource Manual for use by primary care clinicians to assist them in identifying and working with victims of abuse. This manual offers information for practicing clinicians in identifying abuse victims across the lifespan and outlining intervention techniques. The manual provides background information, techniques for screening different populations, tools for clinicians, and extensive educational and statewide referral sources. For more information on the Neighborhood Healthplan Family Violence Resource Manual, contact Lisa Taich-Daly at 617-772-5628.

Lastly, the real sadness and challenge of family violence is to acknowledge that 'there is more than enough violence to go around' and that each discipline must strive to identify and utilize the vast cadre of disciplines that exist in providing a safe thriving environment for women and their children. Informal inquiry indicates that domestic violence is in the top four concerns of an institution. Such institutions include: the police, courts, health care providers, mental health providers, probation, the department of youth service, the department of social service and our schools - just to name a few. The common thread that we all share is that we all care for victims of violence-the challenge that we face is providing a coordinated collaborative approach to integrating our services!

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*Annie Lewis O'Connor is the Nurse Manager of the Women's Department at the Neponset Health Center in Dorchester. She has been a practicing clinician for more than 20 years and is a member of the Governor's Commission on Domestic Violence.*

# MASSACHUSETTS BATTERED WOMEN'S SHELTERS AND RESOURCE PROGRAMS

**A Safe Place**  
9 Bayberry Court  
PO Box 3231  
Nantucket, MA  
02584-3231

**Alternative House**  
PO Box 2096  
Highland Station  
Lowell, MA 01851

**Brockton Family  
& Community  
Resource Center**  
180 Belmont St.  
Brockton, MA 02401

**Casa Myrne Vasquez**  
PO Box 18019  
Boston, MA 02118

**FINEX House**  
PO Box 1154  
Jamaica Plain, MA 02130

**Necessities/  
Necesidades**  
16 Armory Street  
Northampton, MA 01060

**New Hope, Inc.**  
PO Box 4100  
140 Park St.  
Attleboro, MA 02703

**Respond Inc.**  
PO Box 555  
Somerville, MA 02143

**Women's Service  
Center**  
146 First Street  
Pittsfield, MA 01201

**Womansplace Crisis  
Center**  
PO Box 4206  
Brockton, MA 02403

**Women's Resource  
Center**  
PO Box 2503  
Fitchburg, MA 01420

**YWCA Arch Program**  
PO Box 80632  
Springfield, MA 01138

**HAWC**  
27 Congress Street  
Salem, MA 01970

**Caucus of Women  
Legislators**  
Executive Director  
State House, Room 156  
Boston, MA 02133

**YWCA Daybreak  
Resources for  
Women & Children**  
PO Box 3093  
Worcester, MA 01613-3093

**New Bedford  
Women's Center**  
Battered Women's Project  
252 County Street  
New Bedford, MA 02740

**Our Sister's Place**  
PO Box 4236  
Fall River, MA 02723

**Services Against  
Family Violence**  
Box 164  
Malden, MA 02148

**Transition House**  
PO Box 530  
Harvard Square Station  
Cambridge, MA 02138

**Women's Crisis Center  
of Newburyport**  
9 Prince Place  
Newburyport, MA 01950

**Support Committee  
for Battered Women**  
PO Box 24  
Waltham, MA 02254

**DOVE**  
Box 287  
Quincy, MA 02269

**Jane Doe, Inc., MA**  
**Coalition Against  
Sexual Assault and  
Domestic Violence.**  
14 Beacon Street #507  
Boston, MA 02108

**Elizabeth Stone  
House**  
PO Box 15  
Jamaica Plain, MA  
02130

**Harbor Me, Inc.**  
PO Box 191  
Chelsea, MA 02150

**New England  
Learning Center for  
Women**  
10 Park Street  
Greenfield, MA 01301

**Renewal House**  
PO Box 919,  
Roxbury Crossing  
Roxbury, MA 02120

**South Shore  
Women's Center**  
225 Water St.  
#412  
Plymouth, MA 02360

**Womanshelter  
Companeras**  
PO Box 6099  
Holyoke, MA 01041

**Women's Resource  
Center**  
454 North Canal Street  
Lawrence, MA 01842

**Women's Support  
Services**  
PO Box 369  
Vineyard Haven, MA  
02568

**SAFE HARBOR**  
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Hyannis, MA  
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Its purpose is to provide a forum for  
discussion and serve as a clearinghouse for  
information on the issues addressing the  
declared public emergency of domestic  
violence. We welcome your comments and  
story contributions to **FORUM**.

*The views and opinions expressed in  
**FORUM** are those of the individual  
authors and do not necessarily reflect  
the views of the Commission.*

The Massachusetts Coalition of Battered Women's Service Groups has merged with the Massachusetts Coalition Against Sexual Assault. The new organization that has been formed is:

**JANE DOE INC.,  
MASSACHUSETTS  
COALITION AGAINST SEXUAL ASSAULT  
AND DOMESTIC VIOLENCE**

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